

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LARRY ROGER SHEPHERD, etc.,)
)
Plaintiff,)
)
v.) CIVIL ACTION 12-0290-WS-N
)
CORIZON, INC., et al.,)
)
Defendants.)

ORDER

This matter is before the Court on the defendants' joint motion to dismiss. (Doc. 118). The file reflects that, on May 16, 2013, one of the defendants filed a suggestion of the death of the plaintiff. (Doc. 107). Plaintiff's counsel confirmed the death of his client. (Doc. 111).

"If the motion [to substitute] is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a). The filing of the suggestion of death, which was served on plaintiff's counsel, triggered this provision. The 90-day period provided by Rule 25(a) expired on or about August 15, 2013. No motion for substitution has been filed.

On or before June 14, 2013, plaintiff's counsel notified the surviving sisters of the plaintiff (who are also the executrix and alternate executrix of his estate), in writing, that counsel would not represent the estate in this matter. Plaintiff's counsel also notified the sisters of the 90-day deadline for substitution. (Doc. 111). Assuming without deciding that the survivors were entitled to such notice, it is clear that the persons able to move for substitution knew of their obligation to do so and knew it over two months before the deadline for doing so passed.

As this Court has noted, “[n]otwithstanding the mandatory language in the rule, courts have generally couched the Rule 25(a) procedure as being discretionary.” *Hall v. Infirmary Health System*, 2008 WL 1774164 at *1 (S.D. Ala. 2008). In particular, the Court may grant an extension of the 90-day period upon a showing of excusable neglect. *Id.* at *2. Here, however, and even though two full weeks have passed since the 90-day period expired, there has been neither a motion to substitute nor an attempted showing of excusable neglect for failing to do so.

For the reasons set forth above, the defendants’ motion to dismiss is **granted**. This action is **dismissed** pursuant to Rule 25(a).

DONE and ORDERED this 30th day of August, 2013.

s/ WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE